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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1418~~ 236

PEPSI COLA BOTTLING COMPANY OF PUERTO RICO, INC.,
Petitioner

v.

ALEJANDRO OTERO, ET ALS., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner, Pepsi Cola Bottling Company of Puerto Rico, Inc., prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico, entered March 18th, 1966, reversing a judgment of the San Juan Part of the Superior Court of Puerto Rico, which dismissed a complaint filed by Respondents[1] and directed that Re-

[1] In addition to the above named respondent, 79 other employees are named in the complaint, Appendix A, infra p. 1a, R. 1 [References are to pages of the certified transcript of the Record which has been filed with the Court.]

spondents' claims be submitted to the grievance and arbitration proceedings established under the collective bargaining agreements entered into by the parties.

CITATION TO OPINIONS BELOW

The judgment of the Supreme Court of the Commonwealth of Puerto Rico is unreported; it is printed in Appendix B, *infra* p. 3a and is reproduced in the certified transcript (R. 208). The judgment of the San Juan Part of the Superior Court of Puerto Rico dismissing the complaint and directing that the claim be submitted to arbitration is not reported. It is printed in Appendix C, *infra,* p. 4a, and is reproduced in the certified transcript of the record (R. 179).

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico is dated March 18, 1966 and was entered on the same date. Since Petitioner is claiming a right under a statute of the United States, jurisdiction of this Court is invoked under 75 Stat. 417 (28 U.S.C. 1258(3)). *Goodall-Sanford, Inc.* v. *United Textile Workers of America,* 353 U.S. 550 (1957).

QUESTIONS PRESENTED

Whether, as regards an employer in an industry affecting commerce, and who meets the jurisdictional standards of the National Labor Relations Board:

1. Federal substantive law under Section 301(a) of the Labor-Management Relations Act (61 Stat. 156, 29 U.S.C. 185(a)), requires employees to exhaust the administrative remedies of an appropriate collective

bargaining agreement as a condition precedent to an action in court for allegedly unpaid wages.

2. Federal substantive law under Section 301(a) of the Labor-Management Relations Act (61 Stat. 156, 29 U.S.C. 185(a)) and Article I, Section 8, Clause 3, of the Constitution of the United States, preempts a state ruling permitting action in court by employees for alleged unpaid wages without prior exhaustion of the administrative remedies of an appropriate collective bargaining agreement.

STATUTES INVOLVED

The statutory provision directly involved is Section 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 USC Sec. 185(a)). The text of this provision is reprinted in Appendix D, *infra*, p. 5a.

STATEMENT OF THE CASE

Petitioner is a corporation in the business of manufacturing and bottling a soft drink known by the trade name of "Pepsi-Cola", as well as other similar products (R. 177). It annually imports in interstate commerce syrup concentrate valued between $350,000 to $400,000 (R. 177).

On or about January 10th, 1964, Respondents filed a complaint against Petitioner in the Superior Court of Puerto Rico, San Juan Part, alleging that Petitioner had failed to pay certain overtime allegedly worked totaling the sum of $75,000, and in addition an equal amount in liquidated damages (Appendix A, *infra*, p. 1a, (R. 1).

At the time of the filing of said complaint there was in existence a collective bargaining agreement negoti-

ated between Respondents' representative, Unidad General de Trabajadores de Puerto Rico (U.G.T.), affiliated to the United Brewery Workers of America, AFL-CIO, Local 611 (hereinafter called the Brewery Workers Local) and Petitioner (R. 150), which contract contained a grievance and arbitration clause (Appendix E, *infra,* p. 5a, R. 153). Respondents did not take any step under this grievance procedure prior to the present suit (Answer to Interrogatory No. 6, R. 5-148) although this procedure had been used on other occasions to settle grievances of this nature (R. 178).

Since on or about May 6, 1963 there was pending in the United States District Court for the District of Puerto Rico, a declaratory judgment suit and class action brought by Petitioner against the Brewery Workers Local and five of the present Respondents[2], to seek clarification of certain wage and hour questions (Appendix F, *infra,* p. 8a, R. 171). In said case, the Brewery Workers Local and the class representatives[3] of Respondents alleged that Petitioner "has not in any way complied with the administrative proceeding fixed in the collective bargaining agreement negotiated between plaintiff and defendants, which proceeding is a *sine qua non* requisite to be followed prior to the filing of any judicial action in the instant controversy." (Appendix G, *infra,* p. 10a, R. 173). Respondents knew of said proceeding at the time the present action was commenced.[4] (See Answer to Interrogatory No. 7, R. 5-148).

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[2] Santos Rivera Canales, Francisco Colón, Gregorio Maldonado, José Inés Soto and Julián Sierra.

[3] This fact was admitted (Appendix G, infra p. 10a, R. 174).

[4] The suit has since been dismissed.

On September 10, 1964, Petitioner moved for dismissal of the present action alleging the failure of Respondents to exhaust the collective bargaining contract remedies (R. 149).

On December 14, 1964, Judge Manuel A. Moreda, of the San Juan Part of the Superior Court of Puerto Rico, decided that Federal Law required dismissal of the suit and ordered arbitration of the grievance. (Appendix C, *infra*, p. 4a, R. 179).

Respondents sought review of this decision before the Supreme Court of the Commonwealth of Puerto Rico (R. 179). Prior to said action, however, Respondent through their Union agents, sought a meeting of the grievance committee, in compliance to the decision of the lower Court (Appendix H, *infra*, p. 12a, R. 206). Said meeting never took place for reasons not herein relevant.

On March 18, 1966, the Supreme Court of the Commonwealth of Puerto Rico reversed the decision of the lower Court (Appendix B, *infra*, p. 3a, R. 208). The decision finds that Petitioner was in interstate commerce; that collective bargaining agreements were in effect between Petitioner and Respondents' union throughout the period of time covered by the complaint (January 10th, 1954—January 13, 1964); and that said contracts contained arbitration clauses. The court below held, however, that since these contracts were negotiated and signed prior to its decision in *Pérez* v. *Autoridad de Fuentes Fluviales*, D.P.R. (January 25, 1963),[5] Respond-

[5] A certified translation of this decision has been filed with the certified record.

ents were not required to exhaust the administrative remedies of the contracts before filing suits in courts. In *Pérez* v. *Autoridad de Fuentes Fluviales, supra,* the Supreme Court of the Commonwealth of Puerto Rico adopted as local Puerto Rican law the federal standard of requiring exhaustion of contract remedies prior to court action. The court decided however that this standard would be applied in a prospective manner only, to contracts negotiated and signed after the said decision. In *Martínez* v. *Commonwealth Oil Refining Co.,* D.P.R. (res. June 30, 1965),[6] cert. den. 383 U.S. 936 (March 7, 1966), the court below held that this local limitation was equally applicable to industries in interstate commerce.

REASONS FOR GRANTING THE WRIT

There are in Puerto Rico approximately 2,200 manufacturers engaged in commerce.[7] These employers employ in excess of 78,000 production employees with annual payrolls in excess of $160,000,000. They ship goods in commerce in excess of $1,480,000,000 annually. The Petitioner is one of these employers.

As to these employers the decision of the Supreme Court of the Commonwealth of Puerto Rico in the present case is clearly contrary to controlling decisions of this Court in an area of the law where federal substantive law is paramount. *Textile Workers Union*

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[6] Id.

[7] U.S. Bureau of the Census, Census of Manufacturers: 1963, Puerto Rico MC 63-P.R., U.S. Government Printing Office, Washington, D.C., at pages 36, 83. Official figures later than 1963 are presently unavailable. The said statistics do not include non-manufacturing employers such as service and construction, nor do they include non-production employees.

v. *Lincoln Mills,* 353 U.S. 448 (1957); *Dowd Box Co.* v. *Courtney,* 368 U.S. 502 (1962); *Teamsters Union* v. *Lucas Flour Co.,* 369 U.S. 95, (1962); *Smith* v. *Evening News Assoc.,* 371 U.S. 195 (1962); *Packinghouse Workers* v. *Needham Packing Co.,* 376 U.S. 247 (1964); *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650 (1965).

If the decision of the court below is allowed to stand, Petitioner and other industries engaged in commerce in Puerto Rico will be receiving unequal treatment to that of similarly situated industries in other jurisdictions of the United States. Employers and labor organizations in Puerto Rico should not be left without the benefit of these decisions of the Court.

a. Federal Substantive Law Requires the Exhaustion of Contract Remedies.

The establishment of orderly and just methods for presenting and adjusting grievances is a mandatory subject of bargaining. *NLRB* v. *Borg Warner Corp.,* 356 U.S. 342 (1958); *Hughes Tool Co.* v. *NLRB,* 147 F. 2d 69 (CCA 5, 1945). Thus, established federal policy favors the resolution of labor disputes through grievance and arbitration procedures negotiated by the parties in collective bargaining agreements. *United Steelworkers* v. *Enterprise Wheel and Car Corp.,* 363 U.S. 593 (1960).

In aid of this policy of encouraging the peaceful settlement of labor disputes through orderly procedures, the Court has consistently emphasized the exhaustion of contract remedies as a condition precedent to action in the courts. *Textile Workers Union* v. *Lincoln Mills, supra; Smith* v. *Evening News Assoc., supra,* footnote 1 at page 196; *Drake Bakeries, Inc.* v. *Local 50,* 370 U.S. 254 (1962); *Republic Steel Corp.* v.

Maddox, supra. In the *Maddox* case the Court said, at pages 652-653:

> "As a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must attempt use of the contract grievance procedure agreed upon by employer and union as the mode of redress. If the union refuses to press or only perfunctorily presses the individual's claim, differences may arise as to the forms of redress then available. But unless the contract provides otherwise, *there can be no doubt that the employees must afford the union the opportunity to act on his behalf.* Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the 'common law' of the plant. Union interest in prosecuting employee grievances is clear. Such activity complements the union's status as exclusive bargaining representative by permitting it to participate actively in the continuing administration of the contract. In addition, conscientious handling of grievance claims will enhance the union's prestige with employees. Employers' interests, for their part, are served by limiting the choice of remedies available to aggrieved employees. And it cannot be said, in the normal situation, that contract grievance procedures are inadequate to protect the interests of an aggrieved employee until the employee has attempted to implement the procedures and found them so.
>
> A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it. In addition to cutting across the interests already mentioned, it would deprive employer and union of the ability to establish a uniform and exclusive method for orderly settlement of employee grievances. If a grievance pro-

> cedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation 'would inevitably exert a disruptive influence upon the negotiation and administration of collective agreements.'"[8] (Emphasis added).

The lower federal courts have consistently required exhaustion of contract remedies in suits for causes of action similar to the present case. *Beckley* v. *Teyssier,* 332 F. 2d 495 (CA 9, 1964); *Evans* v. *Hudson Coal Co.,* 165 F. 2d 970, 973 (CA 3, 1947); *Watkins* v. *Hudson Coal Co.,* 151 F. 2d 311, 319 (CA 3, 1945); *Donahue* v. *Susquehanna Colleries Co.,* 138 F. 2d 3, 6-7 (CA 3, 1943). The decision of the Supreme Court of the Commonwealth of Puerto Rico in the present matter is in direct conflict with said cases and is thus contrary to federal substantive law.

In *Beckley,* plaintiffs sued under the Fair Labor Standards Act without exhausting the contract remedies. The trial court dismissed the suit notwithstanding plaintiffs' allegation that their action was statutory and not contractual. The Court of Appeal, in sustaining the lower court said, at page 497:

> "It is clear to us that the claims of appellants are ones growing out of the relation of employer and employee and necessarily involve the application and interpretation of the contract provisions above quoted, and therefore fall squarely within Article V of the Collective Bargaining Agreement. To sustain appellants' contention would be to emasculate the arbitration provisions contained in the Collective Bargaining Agreement."[9]

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[8] Citations and footnotes have been omitted.

[9] Id.

In the instant case the parties had used the grievance procedure on previous occasions to resolve similar claims (R. 178); Respondents affirmatively requested dismissal of similar suits by reason of Petitioner's failure to exhaust contract remedies (Appendix G, *infra*, p. 10a, R. 174); and Respondents took initial steps to comply with the judgment of the lower court ordering arbitration. (Appendix H, *infra*, p. 12a, R. 206). In view of these facts, the rule espoused by the Court below "has little to commend it." *Republic Steel Corp.* v. *Maddox, supra.*

If the decision of the Court below is permitted to stand, employers and labor organizations in Puerto Rico will be placed in the disadvantageous position of having to conform to federal law, which encourages the establishment and compliance of contractual procedures, while at the same time failing to receive the benefit of stable and orderly labor relations through freedom from multiplicity of actions and procedures.

b. Federal Substantive Law Is Paramount and Inconsistent State Action Must Be Set Aside.

It is now beyond argument that federal labor contracts must be interpreted pursuant to federal substantive law. *Textile Workers Union* v. *Lincoln Mills, supra; Dowd Box* v. *Courtney, supra; Teamsters* v. *Lucas Flour Co., supra; Packinghouse Workers* v. *Needham Packing Co., supra.*

"... [I]ncompatible doctrines of local law must give way to principles of federal labor law" as the "subject matter of § 301(a) 'is peculiarly one that calls for uniform law' ", being that "[t]he importance of the area which would be affected by separate systems of substantive law makes the need for a single body of federal law particularly compelling." *Teamsters Unions* v. *Lucas Flour Co., supra,* at pages 103-104.

In *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. (March 24, 1966), the Court said, at page :

> "The need for uniformity, then, is greatest where its absence would threaten the smooth functioning of those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it . . ."

If "limiting the choice of remedies" and the prevention of "disruptive influences upon the negotiation and administration of collective agreements", *Republic Steel Corp.* v. *Maddox,* supra, are to have significant practical value to everyday labor relations, the Court should, at this time, exercise its supervisory functions. Further protracted litigation, with its attending delays, costs and disturbance of relations will ill promote federal labor policy.

The incompatible local rule of the Supreme Court of the Commonwealth of Puerto Rico must therefore give way to paramount national policy.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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